APPENDIX A.

Opinion of the California Supreme Court.

[L.A. No. 29354. In Bank. Apr. 19, 1967.]

P. S. O'Reilly, Plaintiff and Appellant, v. Board of Medical Examiners of the State of California, Defendant and Respondent.

[On hearing after decision by the Court of Appeal, Second Appellate District, Division Four, Civ. No. 29096 (246 A.C.A. 899, 55 Cal.Rptr. 152) affirming judgment of the superior court. Judgment reversed with directions.]

Appeal from a judgment of the Superior Court of Los Angeles County, William E. MacFaden, Judge. Reversed with directions.

Proceeding in mandamus to set aside an order suspending a physician's license. Judgment denying writ reversed with directions to set aside order of revocation and to reconsider penalty in light of opinion.

Kirtland & Packard, Richard L. Kirkland, Walter N. Anderson and Ellis J. Horvitz for Plaintiff and Appellant.

Stanley Mosk and Thomas C. Lynch, Attorneys General, Stephen H. Silver and Conrad Lee Klein, Deputy Attorneys General, for Defendant and Respondent.

Traynor, C. J.—Plaintiff P. S. O'Reilly appeals from a judgment denying his petition for a writ of mandate to set aside an order of the Board of Medical Examiners.

On September 12, 1962, an accusation was filed with the Board of Osteopathic Examiners charging plaintiff with two violations of Business and Profes-

sions Code section 2392.[1] A hearing officer from the Office of Administrative Procedure held hearings on October 10 and December 20, 1962, and on March 11, 1963, filed a proposed decision finding cause for disciplinary action under section 2392. He recommended that plaintiff's license be revoked but that execution be stayed on the condition that plaintiff be placed on probation for five years and suspended from practice for 90 days. While the proceeding was pending plaintiff elected to become a licentiate of the Board of Medical Examiners (see Bus. & Prof. Code, § 2396) and that board renewed his physician's and surgeon's certificate on January 18, 1963. Thereafter, on January 22, 1964, the Board of Medical Examiners ratified the proceedings before the Board of Osteopathic Examiners and adopted the decision of the hearing officer.

Plaintiff then sought review of the board's order in the superior court. The court found that the proceedings of the medical board were within its jurisdiction, that the board's decision was supported by its findings, that the findings were supported by the weight of competent evidence, and that the penalty imposed was not an abuse of discretion. Accordingly, it denied relief.

We note at the outset that there is no merit in plaintiff's contention that he was denied due process when the medical board assessed the penalty against

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[1]Section 2392 provides: "The employing, directly or indirectly, of any suspended or unlicensed practitioner in the practice of any system or mode of treating the sick or afflicted or the aiding or abetting of any unlicensed person to practice any system or mode of treating the sick or afflicted constitutes unprofessional conduct within the meaning of this chapter." All further statutory citations are to the Business and Professions Code unless otherwise specified.

him on the basis of proceedings initiated before the osteopathic board. The matter was transferred to the Board of Medical Examiners after plaintiff had elected to cease being licensed by the osteopathic board and to become a licentiate of the medical board. "[D]ue process is not interested in mere technical formalism. It is the substance that is determinative of whether due process has been afforded." (*Cooper v. State Board of Medical Examiners,* 35 Cal.2d 242, 245 [217 P.2d 630, 18 A.L.R.2d 593].) The medical board ratified the prior actions of the osteopathic board, which complied fully with the procedures set forth in Government Code sections 11503, 11505 and 11509[2] Plaintiff was not injured by the transfer. To refile the accusation would have been an idle act, and to require the hearing officer to rehear the case would have been needlessly wasteful.

The first charge of unprofessional conduct concerned plaintiff's employment of Dr. Daniel Sanchez and Dr. Morimitsu Ohnishi, who were not licensed to practice medicine in California. Dr. Sanchez is a citizen of Mexico and received his medical degree there. Dr. Ohnishi is a citizen of Japan, where he received his medical degree and is a professor of medicine. Both doctors came to the United States under an exchange-visitor program, authorized by the United States Information and Educational Exchange Act of 1948, to serve as trainees in general and traumatic surgery. The Department of State had designated plaintiff's California Emergency

[2]Section 11503 requires the filing of an accusation specifying the statutes that have been violated and the facts that constitute the violation. Section 11505 requires that the respondent be served with the accusation and be notified of his rights to a hearing. Section 11509 requires notice to the respondent of the time and place of the hearing.

Hospital as an exchange-visitor program to provide training in general and traumatic surgery for qualified foreign medical students and had appointed plaintiff as the responsible officer of the program. The parties stipulated that on August 21, 1959, plaintiff aided and abetted Dr. Ohnishi in giving anesthetics to a patient and aided and abetted Dr. Sanchez in assisting in surgery upon the patient. From the foregoing facts the board concluded that plaintiff violated section 2392 by employing and aiding and abetting Dr. Ohnishi and Dr. Sanchez in the unlicensed practice of medicine.

Plaintiff contends that the board cannot discipline him for these activities, since they were undertaken pursuant to the federal exchange-visitor program. He asserts that the supremacy clause of the United States Constitution (art. VI, Cl. 2) precludes enforcement of the state licensing laws in this case, on the ground that such enforcement would interfere with the federal exchange program. We do not agree with plaintiff's contention.

Since a state law that is incompatible with federal law cannot be enforced (*United States v. Pink,* 315 U.S. 203, 230-232 [86 L.Ed. 796, 817-819, 62 S.Ct. 552]; *United States v. Belmont,* 301 U.S. 324, 331-332 [81 L.Ed. 1134, 1139-1140, 57 S.Ct. 758]), the controlling question is whether section 2392 is incompatible with the federal program.

The exchange-visitor program was established by *the United* States Information and Educational Exchange Act of 1948 (62 Stat. 6).[3] Congress declared

[3]This statute was repealed by Public Law 87-256, §111(a)(2), 75 Stat. 538 (1961) and the program was consolidated with other similar programs by Public Law 87-256, 75 Stat. 527-38 (1961), 22 U.S.C. §§2451-58 (1964).

its purpose to be "to promote a better understanding of the United States in other countries, and to increase mutual understanding between the people of the United States and the people of other countries" by, among other things, establishing an interchange of persons, knowledge and skill. (See 62 Stat. 6, § 2.) The Secretary of State was authorized to provide for the interchange between the United States and other countries of students, trainees, teachers, guest instructors, professors, and leaders in fields of specialized knowledge or skill. (See 62 Stat. 7, § 201.) The Secretary was directed to use "existing reputable agencies," preferably private rather than governmental, in setting up the program for foreign visitors. (See 62 Stat. 7, 14, §§ 201, 1005.) In addition he was empowered to prescribe and enforce the conditions under which the foreign visitors were to be admitted to this country. (See 62 Stat. 7, § 201.)

Pursuant to this delegation of authority, the Secretary established different classes of exchange-visitor programs, including programs sponsored by hospitals and related institutions. (See 22 C.F.R. § 63.3 (c)(1).) Under the regulations those who wish to sponsor a program must apply to the Secretary for approval, and in reviewing the application the Secretary considers professional organizations' appraisal of the quality of a particular program. (See 22 C.F.R. §§ 63.2(a), 63.3(a).) The Secretary also can revoke the approval for sufficient cause including failure to maintain educational standards established by competent professional agencies. (See 22 C.F.R. § 63.3(b).) Once approved, the sponsor has the primary responsibility for recruiting exchange visitors and must provide them with

a form specifying the purpose, direction and condition of the visit. (See 22 C.F.R. § 63.4.) This form enables the visitor to obtain his visa from the American consul in his native country.

Dr. O'Reilly applied for approval as a sponsor of an exchange-visitor program and in support of his application filed letters from the American College of Osteophatic Surgeons and the American Osteopathic Association attesting to the nature and quality of his hospital program. The Secretary designated plaintiff as a sponsor of a program to provide training in general and traumatic surgery for qualified foreign medical students and a three-year course in clinical laboratory for qualified foreign students. Thereafter, plaintiff recruited Drs. Ohnishi and Sanchez to participate in his program as trainees in traumatic and reconstructive surgery with special emphasis in reconstruction of the hand and forearm.

There can be no question that to conduct the exchange program in compliance with the state medical regulation would frustrate to some extent the program's foreign policy objectives. Effective practical training in general and traumatic surgery requires some treatment of patients. (See §§ 2147, 2147.5, which authorize undergraduate and post-graduate medical students to perform medical functions in the course of their study.) Such treatment would be permissible if the foreign doctor were licensed in California (see § 2193) or if the program were conducted under the auspices of an ap-

proved medical school in compliance with the detailed requirements of sections 2147.5 and 2147.6. Either of these alternatives, however, would impose burdens on the foreign visitors that might be out of proportion to the benefits that they could expect to receive under the limited exchange programs contemplated under the federal statute. Either alternative would also expose the foreign visitor to rejection by the state board for various reasons. Although it thus appears that to comply with state law a foreign visitor must either refrain from practicing medicine or comply with burdensome state regulations, we do not believe that the federal statute supersedes state regulation.

The basic problem is one of accommodating the foreign policy objectives of the exchange programs with the interests of the patients who might be treated by the visiting doctors. Congress has the power to make this accommodation even though the power to regulate the practice of medicine is ordinarily committed to the states. (*Linder v. United States,* 268 U.S. 5, 18 [69 L.Ed. 819, 823, 45 S.Ct. 446, 39 A.L.R. 229]; cf. *Sperry v. Florida,* 373 U.S. 379, 385 [10 L.Ed.2d 428, 432, 433, 83 S.Ct. 1322].) It canot be lightly assumed, however, that in establishing the exchange program, Congress intended to deprive patients of the protection of state regulation. Had it so intended, we are convinced that it would have provided an effective alternative to protect patients of visiting doctors. The federal program does not provide effective patient protection. A prospective sponsor need only secure sum-

mary recommendation from professional groups (see 22 C.F.R. § 633(a)), and the selection of the visitors is controlled largely by the sponsors, not the federal authorities. Finally we note that our conclusion that state regulation is not superseded is supported by the only administrative interpretation we have been able to find.[4]

Plaintiff also contends that under state law the federal enactment is a statutory basis for an implied exception to the state regulations pursuant to which the visitors could lawfully perform medical acts. He invokes *Magit v. Board of Medical Examiners,* 57 Cal.2d 74 [17 Cal.Rptr. 488, 366 P.2d 816], in which we recognized that with a statutory basis for an exception, persons not licensed to practice medicine may perform some medical acts. The reasoning of the *Magit* case, however, was based on the interrelationship of the state licensing provisions applicable to doctors and nurses, and there is nothing in that case or in the legislative scheme to support an exception to the prohibition of

[4]"In approving any particular exchange program, I assume, as the responsible officer of the Department of State, that the sponsor will be aware of and comply with the applicable federal, state and local laws." (Letter from Culver E. Gidden, Chief, Facilitative Services Staff, Bureau of Educational and Cultural Affairs, Department of State, to Warren H. Deering, Deputy Attorney General, December 11, 1964.) Plaintiff contends that the word "applicable" in this letter begs the basic question, namely, what laws are applicable? Since the letter was written in response to an inquiry from the Attorney General about the applicability of state law to plaintiff's exchange program, we doubt that Mr. Gidden meant to avoid the inquiry by begging the question. We believe he meant that federal, state, and local laws that would ordinarily apply remained applicable to the sponsor of any exchange program.

unlicensed practice based on a federal rather than a state statute.

The second charge of unprofessional conduct involves plaintiff's employment of William Thomas Duffy, who was a graduate of the California College of Medicine but was not licensed to practice medicine in California. Mrs. Beatrice Gowdy testified that Duffy diagnosed an injury to her knee and treated it on several occasions at plaintiff's hospital. On no occasion had plaintiff examined her or been present while she was being treated. Plaintiff testified, however, that he had examined Mrs. Gowdy on several of her visits and had made the diagnosis and that Duffy had consulted him before administering each treatment.

The board found that plaintiff employed Duffy and that Duffy practiced "a system of treatment in the diagnosis and treating of one Beatrice Gowdy." It further found that Duffy consulted with plaintiff before applying diathermy and other treatment and that plaintiff was not present during the treatments.

Plaintiff contends that the evidence and findings do not support the conclusion that he employed Duffy to practice medicine. There is, however, substantial evidence to the contrary. In administering the treatments to Mrs. Gowdy, Duffy performed medical functions and his consultations with plaintiff did not make his actions lawful. Although section 2665, subdivision (a), allows a full time assistant to administer physical therapy under a licensed person's "orders, directions and

supervision," there is no evidence that plaintiff attempted to provide the supervision required by this section. In addition, Mrs. Gowdy testified that plaintiff had never seen her. These facts justify the conclusion that Duffy had diagnosed and treated Mrs. Gowdy and that he was employed to do so.

Finally, plaintiff contends that even if the charges are sustained by the evidence, the punishment is excessive. Although good faith is not a defense (see *Magit v. Board of Medical Examiners, supra,* 57 Cal.2d 74), we believe that the uncertainty surrounding the question of federal preemption and plaintiff's apparent good faith in allowing the foreign doctors to assist him preclude any punishment greater than probation for the violation involving the exchange program. (See *Magit v. Board of Medical Examiners, supra*; *Harris v. Alcoholic Beverage etc. Appeals Board,* 62 Cal.2d 589, 594-595 [43 Cal.Rptr. 633, 400 P.2d 745]; *Brown v. Gordon,* 240 Cal.App.2d 659, 666-667 [49 Cal. Rptr. 901]; cf. *Hildebrand v. State Bar,* 36 Cal.2d 504, 514 [225 P.2d 508].)

Since a single penalty was imposed for both violations we have no way of knowing the extent to which the board relied upon the first violation in imposing the 90-day suspension. Accordingly, the case must be remanded to the board for reconsideration of the penalty assessed. (See *Cooper v. State Board of Medical Examiners,* 35 Cal.2d 242, 252 [217 P.2d 630, 18 A.L.R.2d 593]; *Garfield v. Board of Medical Examiners,* 99 Cal.App.2d 219, 231-232 [221 P.2d 705].)

The judgment is reversed, and the trial court is directed to enter judgment ordering respondent board to set aside its order of revocation and to reconsider the penalty in the light of this opinion.

Peters, *J.*, Tobriner, *J.*, Burke, *J.*, Sullivan, *J.*, and White, *J.*,* concurred.

McComb, *J.*—I dissent. I would affirm the judgment for the reasons expressed by Mr. Justice Kingsley in the opinion prepared by him for the Court of Appeal in *O'Reilly v. Board of Medical Examiners* (Cal. App.) 55 Cal.Rptr. 152.

*Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

APPENDIX B.[1]

(CAPTION OMITTED)

Washington, Thursday May 14, 1959

Title 22—FOREIGN RELATIONS

Chapter 1—Department of State

[Dept. Reg. 108,399]

Part 63—Exchange-Visitor Program

Part 63, Chapter I, Title 22 of the Code of Federal Regulations is amended to read as follows:

Sec.

63.1 Definitions.

63.2 Application for Exchange-Visitor Program designation.

63.3 Action on applications for Exchange-Visitor Program designation.

63.4 Notification to exchange visitors.

63.5 Applications for change of status to exchange visitor, extensions, and program transfers.

63.6 Requests for waiver of provisions of Public Law 555, 84th Congress.

63.7 Action by Secretary on requests for waiver of provisions of Public Law 555, 84th Congress.

Authority: §§63.1 to 63.7 issued under sec. 4, 63 Stat 111; 5 U.S.C. 151c. Interpret or apply secs. 201, 1005, 1009, 62 Stat. 7, 14; 2 U.S.C. 1446, 1437, 1440.

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[1]This document appears in the Administrative Record as Exhibit "B-10".

Cross References: For consular procedure with respect to issuance of visas to exchange visitors, see §41.41 of this chapter.

§63.1 *Definitions.*

(a) As used in this part the term "Act" refers to the United States Information and Educational Exchange Act of 1948, as amended.

(b) As used in this part the term "sponsor" means any existing reputable United States agency or organization or recognized international agency or organization having United States membership and offices which makes application as hereinafter prescribed to the Secretary of State for designation of a program under its sponsorship as an "Exchange-Visitor Program."

(c) As used in this part, the term "Exchange-Visitor Program" means a program of a sponsor designed to promote interchange of persons, knowledge and skills, and the interchange of developments in the field of education, the arts, and sciences, and concerned with one or more of the categories of exchange visitors defined in paragraph (g) of this section, which has been designated as such by the Secretary of State, and in actual operation serves to promote mutual understanding between the people of the United States and the people of other countries.

(d) As used in this part, the term "Secretary" means either the Secretary of State or an officer duly designated by him.

(e) As used in this part, the term "Department" means the Department of State.

(f) As used in this part the term "cooperating country" means any country with which the Department is authorized to conduct exchange of persons under the provisions of section 201 of the Act.

(g) As used in this part the term "exchange visitor" means any foreign national who has been selected by a sponsor to participate in an Exchange-Visitor Program and who is seeking to enter or has entered the United States temporarily in one of the following categories:

(1) A "student", for the purpose of study, research, or training at or under the auspices of, an established school or institution of learning, or

(2) A "trainee," for the purpose of obtaining practical training in a specialized field of knowledge and skill in a nonacademic institution or agency, or

(3) A "teacher," for the purpose of teaching in established primary or secondary schools, or established schools offering specialized instruction, or

(4) A "guest instructor", for the purpose of imparting knowledge through lectures or special instruction, or

(5) A "professor", for the purpose of teaching or advanced research, or both, in an established institution of higher learning, or

(6) A "leader in a field of specialized knowledge or skill", for purposes of observation, consultation, advanced research or training or the sharing of such specialized knowledge or skill.

(h) As used in this part the term "participant" means a foreign national who has effected his admission into the United States as an exchange visitor or

who has acquired exchange-visitor status after admission.

§63.2 Application for Exchange-Visitor Program designation.

(a) Any sponsor may apply to the Secretary for designation of a program under its sponsorship as an Exchange-Visitor Program. Such application shall be made on Form DSP-37, "Exchange-Visitor Program Application." The application shall be completed in all details and shall be submitted to the Secretary.

(b) Each sponsor shall assume, inter alia, in the application the obligation to:

(1) Notify the District Director of the Immigration and Naturalization Service having administrative jurisdiction over the participant's place of temporary residence when (i) a participant has completed the sponsor's program and is scheduled to depart from the United States or to transfer to another Exchange-Visitor Program, or (ii) a participant has ceased to engage in the activity for which he was admitted and to maintain exchange-visitor status.

(2) Instruct any participant requiring a temporary extension of stay to apply to the Immigration and Naturalization Service at least 30 days before the expiration of the participant's stay and provide the participant requiring the extension with written evidence showing the period and terms of the extension desired.

(3) Provide any participant proposing to transfer to another Exchange-Visitor Program with a release in writing which will certify to the need or desirability of further Exchange-Visitor Program participation.

§63.3 Action on applications for Exchange-Visitor Program designation.

(a) *Evidence.* An application for program designation on Form DSP-37 submitted to the Secretary shall be examined to ascertain the adequacy of the information furnished. If sufficient information has not been furnished, the sponsor shall be requested to supply information in which the application is deficient. In addition to the information furnished on the Form DSP-37, the Secretary may require a sponsor to present any evidence of a documentary nature, e.g., program reports, institutional catalogues, letters of professional recognition, accreditation, or approval, which he may consider necessary in making his determination of the eligibility of the program to be designated as an Exchange-Visitor Program.

(b) *Decision by the Secretary.* Upon receipt and consideration of the Form DSP-37, including any required additional evidence, the Secretary may in his discretion designate the sponsor's program as an Exchange-Visitor Program. The Secretary will notify the sponsor in writing of his decision. The Secretary may in his discretion revoke designation of an Exchange-Visitor Program for any sufficient cause, including but not restricted to: (1) Failure to maintain educational standards as established by competent professional agencies; (2) failure to submit reports on program operation when requested by the Secretary; (3) misuse of the Exchange-Visitor Program.

(c) *Assignment of serial number.* (1) If designation is made, the program will be assigned a number within one of the following series:

G-I—Programs sponsored by the International Educational Exchange Service.

G-II—Programs sponsored by the International Cooperation Administration.

G-III—Programs sponsored by the United States Information Agency.

G-IV—Programs sponsored by international agencies or organizations.

G-V—Programs sponsored by national, state, or local governmental agencies.

P-I—Programs sponsored by educational institutions such as schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research.

P-II—Programs sponsored by hospitals and related institutions.

P-III—Programs sponsored by non-profit associations, foundations, and institutes.

P-IV—Programs sponsored by business and industrial concerns.

P-V—Programs sponsored by host institutions and organizations to international conferences, congresses, and symposia.

(2) The sponsor will thereafter refer to the serial number in any correspondence with the Secretary, consular officers, or the Immigration and Naturalization Service concerning the Exchange-Visitor Program or any individual included in such program.

(d) *Notification to consuls and the Immigration and Naturalization Service.* When a program has been designated as an Exchange-Visitor Program, the American consular officers concerned and the Commissioner of Immigration and Naturalization shall be notified by

the Department of the sponsor, serial number, and nature and purpose of the program.

§63.4 Notification to exchange visitors.

The officer designated as the Responsible Officer of an Exchange-Visitor Program shall execute a Form DSP-66, "Certificate of Eligibility for Exchange-Visitor Status," in a single original copy and furnish it to each selected exchange visitor for presentation to the American consular office in applying for a visa. The Responsible Officer is required to furnish in the Form DSP-66 the time and terms of the proposed exchange visit which must be demonstrably within the scope of the designated Exchange-Visitor Program concerned. The exchange visitor must present a Form DSP-66 properly filled out by the sponsor and must personally execute the reverse to be eligible for a visa and must present, at the port of entry, Form DSP-66 endorsed by the consular officer issuing the visa to be eligible for admission into the United States.

§63.5 Applications for change of status to exchange visitor, extensions, and program transfers.

(a) *Application for change of status to exchange visitor.* Such application shall be made by the prospective exchange visitor who has been admitted into the United States in one of the nonimmigrant classifications specified in 101(a)(15) of the Immigration and Nationality Act and who has maintained bona fide nonimmigrant status to the office of the Immigration and Naturalization Service nearest the alien's place of temporary residence. The application must be accompanied by a Form DSP-66 properly executed by the sponsor and the prospective exchange visitor. The Immigration

and Naturalization Service officer to whom application is made may request the views of the Department prior to the granting of the change of status in those cases in which (1) the applicant has resided in the United States for a period of one year or longer immediately preceding his application, or (2) the officer cannot determine from the evidence submitted that the program activity proposed for the applicant is clearly within the scope of the designation of the Exchange-Visitor Program concerned, or that the selection procedures agreed upon between the sponsor and the Department of State at the time of the designation have been followed.

(b) *Application for extension of stay.* Such application shall be made at least 30 days before the expiration of the exchange visitor's authorized stay to the District Director of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor's place of temporary residence. The application shall be accompanied by the Form DSP-66 with which the exchange visitor originally obtained status, properly endorsed by the sponsor to show the time and terms of the extended stay for which application is made. If the application falls within one of the categories of cases which the Department has advised the Immigration and Naturalization Service are questionable from an exchange point of view, or should be subject to special checks, the Immigration and Naturalization Service may refer the application to the Department for its views prior to action on the application.

(c) *Application for program transfer.* An application for permission to transfer from one designated Exchange-Visitor Program to another must be submitted to the District Director of the Immigration and Nat-

uralization Service nearest the exchange visitor's place of temporary residence by the exchange visitor concerned at least thirty days before participation in the program to which the exchange visitor wishes to transfer is scheduled to begin. Any application for program transfer must be accompanied by a duly executed Form DSP-67, "Certificate of Eligibility for Program Transfer of Exchange Visitor." Before granting the exchange visitor permission to transfer, the District Immigration and Naturalization Service Office concerned may request the views of the Department as to whether a proposed transfer is in the best interests of international exchange in any case in which the applicant is unable to present a certificate of release from the current sponsor, in which it appears that the transfer is solely or principally for the purpose of continuing the residence and employment of the exchange visitor in the United States, or in which the officer cannot perceive clear progress toward an educational objective.

§63.6 Requests for waiver of the provisions of Public Law 555, 84th Congress.

(a) Public Law 555, 84th Congress, provides in part that no person admitted as an exchange visitor or acquiring exchange-visitor status after admission shall be eligible to apply for an immigrant visa, or for a nonimmigrant visa under section 101(a)(15)(H) of the Immigration and Nationality Act, or for adjustment of status to that of an alien lawfully admitted for permanent residence, until it is established that such person has resided and been physically present in a cooperating country or countries for a total of at least two years following departure from the United States, except that

upon request of an interested Government agency and the recommendation of the Secretary of State, the Attorney General may waive the residence abroad requirement in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest.

(b) An exchange visitor desiring to apply for a waiver shall follow procedures and/or regulations established by the Government agency interested in his case.

(c) An applicant for a waiver should arrange for a separate report on his application to be made by the sponsor or sponsors directly to the interested Government agency and to the Secretary of State.

(d) A request for waiver submitted by an agency of the United States Government to the Secretary for his recommendation shall recite the facts concerning the country of origin and the admission and stay in the United States of the exchange visitor or former exchange visitor; identify his sponsor or sponsors by name and program number; name the place of his intended residence in the United States; and state the reason or reasons why the waiver is being requested.

(e) The request must be supported by documentary evidence demonstrating that admission of the exchange visitor for permanent resident status or for nonimmigrant status under section 101(a)(15)(H) of the Immigration and Nationality Act is in the public interest because the two-year period of residence abroad would (1) impose undue hardship upon an exchange visitor who is the spouse of a United States citizen or of a lawfully resident alien that he could not have anticipated at the time he acquired exchange-visitor status or when

he accepted the last extension of stay as an exchange visitor, or (2) be clearly detrimental to a program or activity of official interest to an agency of the Government of the United States.

(f) An exchange visitor who wishes to apply for a waiver under paragraph (c)(1) of this section may apply to the District Director of the Immigration and Naturalization Service having administrative jurisdiction over his intended place of residence in the United States or, if the exchange visitor is abroad, to an American consular officer. If after consideration of an application the Immigration and Naturalization Service views it favorably, it shall transmit its request to the International Educational Exchange Service for the Secretary's recommendation. An American consular officer receiving an application for waiver shall forward it to the Department for the Secretary's consideration and recommendation. An exchange visitor who wishes to apply for a request for waiver under paragraph (e)(2) of this section may apply to the agency interested in his case. If the interested agency views his case favorably it shall transmit its request to the International Educational Exchange Service for the Secretary's recommendation.

§63.7 Action by the Secretary on requests for waiver of the provisions of Public Law 555, 84th Congress.

Upon receipt of a request from an interested agency of the United States Government that the residence abroad requirement of Public Law 555, 84th Congress, be waived in the case of an exchange visitor or former exchange visitor, the Secretary shall review the policy, program, and foreign relations aspects of the case and

in appropriate cases shall transmit his recommendation to the Attorney General for the latter's finding and consequent action.

Dated: April 29, 1959.

John N. Hayes,
Acting Director, International Educational Exchange Service.

[F.R. Doc. 59-4058: Filed, May 13, 1959; 8:47 a.m.]

APPENDIX C.

This Appendix C sets forth the text of the following numbered sections of the Business and Professions Code of the State of California:

§ 2147. *Exemptions; uncompensated students.* Nothing in this chapter shall be construed to prevent a student regularly matriculated in any legally chartered school approved by the board from treating, without compensation to the student, the sick or afflicted as a part of his course of study. (Added Stats.1937, c. 414, p. 1377.)

§ 2147.5 *Students compensated by hospital or school; instructors, resident physicians and assistant residents.* Any graduate student registered with the board and upon whom a degree of doctor of medicine, bachelor of medicine, or doctor of osteopathy has been conferred by a school, approved by the board, and any regularly matriculated student in a school approved by the board may, during and as a part of his course of study, but not for a period of more than two years, treat the sick and afflicted either as such student in a school approved by the board, teaching medicine, surgery or osteopathy in this State, or as an interne in a hospital approved for the training of internes, and may, for rendering such treatment, receive compensation therefor from the hospital or school. Hospitals functioning as a part of the teaching program of an approved school in this State may exchange instructors or resident or assistant resident physicians with an out-of-state approved school, or may appoint a graduate of an approved school as a resident or assistant resident for postgraduate training, and the exchange instructor, resident or assistant resident from such out-of-state

school or the resident or assistant resident for post-graduate training may, for a period not exceeding one year, serve as an instructor, resident or assistant resident in such hospital in this State. Any person registered with the board and upon whom a degree of doctor of medicine or doctor of osteopathy has been conferred by a school approved by the board may act as a resident or assistant resident physician in any hospital or public health department approved for residencies or the training of internes, and may receive compensation therefor from the hospital or public health department; provided, that any such resident or assistant resident shall qualify for and take the next succeeding examination for a physician's and surgeon's certificate given by the board or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If he shall fail to pass such examination or fail to receive a certificate by one of the other methods, pending the results of the examination, all privileges under this section shall automatically cease.

Except to the extent authorized by this section, no graduate student or resident may treat the sick or afflicted or receive compensation therefor, or otherwise engage in or offer to engage in the practice of medicine or surgery; unless he shall hold a valid, unrevoked and unsuspended physician's and surgeon's certificate. (Added Stats. 1939, c. 341, p. 1681, § 1, as amended Stats.1947, c. 867, p. 2041, § 1; Stats.1951, c. 143, p. 398, § 5; Stats.1955, c. 95, p. 562, § 1.)

§ 2147.6[1] *Foreign postgraduate students.* Physicians, with valid visitors' visas issued by the United States of America, who seek postgraduate study in an approved medical school either as a fellow, instructor, or exchange professor, may, after proper application to and approval by the board and receipt of an appointment from the dean of the approved medical school, be permitted by the board to participate in the professional activities of the department in the approved medical school to which they are appointed under the direction of the chairman of the department. Such permission granted by the board shall be for a period not in excess of one year, and must be renewed semiannually. Except to the extent authorized by this section, no such visiting physician may treat the sick or afflicted or receive compensation therefor or otherwise engage in or offer to engage in the practice of medicine and surgery. (Added Stats.1953, c. 101, p. 820, § 1.)

§ 2193. *Applicants from foreign medical schools.* An applicant who does not qualify under Section 2193.5 of this chapter and whose application is based on a diploma issued to him by a foreign medical school, except a Canadian school, shall furnish documentary evidence, satisfactory to the board, that:

(a) He has completed in a medical school or schools a resident course of professional instruction equivalent to that required in this article for a physician and surgeon applicant.

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[1]This section was amended in 1965 (Stats. 1965c 579, page 1907, Section 1). By the amendment, the permission granted by the Board of Medical Examiners under Section 2147.6 could be for a period not in excess of 5 years; the required semi-annual renewal was subject to the discretion of the Board; and the time spent in an approved medical school pursuant to Section 2147.6 was declared not to be available to satisfy the requirements of Sections 2193 and 2193.5.

(b) Subsequent thereto, he has had issued to him by such medical school, a medical diploma, as evidence of the completion of the course of medical instruction required in this chapter.

(c) He has been admitted or licensed to practice medicine and surgery in the country wherein is located the institution in which he has completed the resident courses of professional instruction required under this chapter.

(d) The country in which he has been licensed to practice medicine and surgery as required under subdivision (c) of this section will admit to practice therein citizens of the United States upon proof of prior admission to practice medicine and surgery in some state of the United States or upon proof of matters similar to the requirements in this section for graduates of foreign medical schools.

Applicants under this section must serve at least two years in a service satisfactory to the board in a hospital or hospitals located in the United States and approved by the board for the training of interns, one year of which must be in a hospital in this State. Before a certificate may be issued, the applicant must not only meet the requirements of subdivisions (a), (b), (c) and (d) of this section but must also pass the written examination as provided under Article 10 of Chapter 5 of Division 2 of this code[1] prior to commencing an internship in a hospital in this State, and must also pass an oral and clinical examination at the satisfactory completion of the two-year internship.

Nothing contained in this section shall prohibit the board from disapproving any foreign medical school nor from denying the application if, in the opinion of

the board, the instruction received by the applicant or the courses were not equivalent to that required in this article for a physician and surgeon applicant. (Added Stats.1937, c. 414, p. 1377, as amended Stats.1939, c. 281, p. 1537, § 2; Stats.1941, c. 751, p. 2287, § 1; Stats.1949, c. 530, p. 930, § 1; Stats.1951, c. 239, p. 500, § 1; Stats.1955, c. 1538, p. 2819, § 1.)

§ 2392. *Employment of suspended or unlicensed practitioner; aiding unlicensed person.* The employing, directly or indirectly, of any suspended or unlicensed practitioner in the practice of any system or mode of treating the sick or afflicted or the aiding or abetting of any unlicensed person to practice any system or mode of treating the sick or afflicted constitutes unprofessional conduct within the meaning of this chapter. (Added Stats.1937, c. 414, p. 1377.)